



APPENDIX

Page 1—Report of June 5, 1942:

"(CONFIDENTIAL COMMITTEE PRINT — UNREVISED)"

**"MISCELLANEOUS
DATA ON PROPOSED
REVENUE BILL OF 1942**

Submitted to the

**COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES**

No. 7

JUNE 5, 1942

**F. Action on Technical and Administrative
Amendments—Continued**

**UNITED STATES
GOVERNMENT PRINTING OFFICE**

72043-42 Washington: 1942"

Made public June 10, 1942.

Page 80—Report of June 5, 1942:

"The present law divides nonresident aliens and foreign corporations into two classes for income tax purposes.

(a) Those not engaged in trade or business within the United States and not having an office or place of business therein; and

(b) Those engaged in trade or business within the United States or having an office or place of business therein.

Those falling in classification (a) are taxed generally at a flat rate upon the gross amount of dividends, interest, and other fixed or determinable annual, periodical income from sources within the United States and are not allowed any deductions or credits. Those falling within classification (b) are taxed generally under the same treatment accorded ordinary taxpayers and are entitled to deductions allocable to United States income and to appropriate credits. This provision has been abused, principally by foreign corporations which hold substantial amounts of stock in domestic corporations. By establishing a nominal 'office or place of business in the United States' they can avoid the treatment accorded foreign countries as described above and thus secure deductions and credits.

This amendment would require that in order to get this treatment a foreign corporation or nonresident alien must actually be engaged in trade or business within the United States."

77th Congress, 2nd Sess.

H. R. 7378, "Sec. 162. Aliens and Foreign Corporations Treated as Nonresidents.

* * * * *

(d) Section 204 (d) (relating to deductions of foreign corporations), section 211 (b) (relating to nonresident alien individuals), section 231 (b) (relating to resident foreign corporations), and section 251 (e) (relating to deductions in the case of citizens and domestic corporations entitled to the benefits of section 251) are amended by striking out 'or having an office or place of business therein' wherever occurring therein."

Senate Report No. 1631, pp. 50-51, 135-136:

(pp. 50-51): "Nonresident Aliens and Foreign Corporations.

"Your committee have agreed to the House provision requiring a nonresident alien or a foreign corporation to be engaged in trade or business within the United States in order to be taxable like American citizens or domestic corporations with respect to the income derived from sources within the United States. Under the present law, this privilege is extended to a nonresident alien individual or a foreign corporation which has an office or place of business in the United States, even though it may not be engaged in business therein. The provision in the House bill is applicable only with respect to taxable years beginning after December 31, 1941. With respect to prior taxable years, the provisions of existing law, which afford such treatment to a corporation having an office or place of business in the United States will continue to apply even though such corporation is not engaged in trade or business within the United States."

(pp. 135-136):

**"SECTION 162. ALIENS AND FOREIGN CORPORATIONS
TREATED AS NONRESIDENTS**

AND

**SECTION 211. APPLICATION OF EXCESS PROFITS
TAX TO CERTAIN FOREIGN CORPO-
RATIONS.**

"Under existing law nonresident aliens and foreign corporations are divided into two classes: (a) Those not engaged in trade or business within the United States and not having an office or place of business therein and (b) those engaged in trade or business within the United States or having an office or place of business therein. Those falling within classification (a) are generally taxed at a flat rate upon the gross amount of dividends, interest, and other fixed or determinable annual or periodical in-

come from sources within the United States. Those falling within classification (b) are subject to tax at the rates generally applicable to individuals and domestic corporations, respectively, but only upon income from sources within the United States.

A tendency has arisen, principally on the part of foreign corporations which are substantial holders of the stock of domestic corporations and, occasionally on the part of nonresident alien individuals, to attempt to establish that they have an 'office or place of business' within the United States and hence secure the very different tax treatment accorded taxpayers within class (b). Since such corporations and individuals engage in no other economic activities in the United States, they cannot be said to be engaged in trade or business within the United States.

It appears to your committee to be in the interests of good administration to establish but one test (as is done with respect to capital-stock tax in section 1200 of the Code) in ascertaining the classification of foreign entities, namely, whether or not it is engaged in trade or business within the United States. Such amendment narrows sharply the field of uncertainty arising in such cases and removes a possible avenue of tax avoidance to large foreign corporate and other holders of domestic securities.

Accordingly, section 162, which corresponds to section 143 of the House bill, amends sections 14 (c), 119 (a) (1), 143 (a) (1), 143 (b), 144, 204 (d), 211 (a) (1), 211 (b), 211 (c), 219, 231 (a), 231 (b) and 251 (e) relating to the tax imposed by chapter 1 by striking out 'and not having an office or place of business therein' or like clause wherever occurring therein. Similar changes are made applicable in section 211, which is identical with section 207 of the House bill, to the excess profits tax imposed by chapter 2 of the Code."

